

**STATEMENT OF PROCEEDINGS FOR THE
REGULAR MEETING OF THE
CITY OF MONTEBELLO OVERSIGHT BOARD**

**CITY OF MONTEBELLO
CITY COUNCIL CHAMBERS
1600 WEST BEVERLY BOULEVARD
MONTEBELLO, CALIFORNIA 90640**

Wednesday, May 2, 2012

8:00 AM

Present: Chair Keith Breskin, Vice Chair Richard Bruckner, Edgar Cisneros, Carrie A. Sutkin, Cheryl A. Plotkin and Ernesto Hidalgo

Vacant: Chancellor of California Appointee

I. CALL TO ORDER

Chair Breskin called the meeting to order at 8:00 AM.

II. ADMINISTRATIVE MATTERS

1. Approval of Minutes of April 24, 2012. (12-1889)

On motion of Chair Breskin, by Common consent, this item was approved by the following vote:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

2. Establishment of dates, times and location of the regular meetings of the Oversight Board. (Continued from the meeting of 4-24-12) (12-1710)

On motion of Vice Chair Bruckner, seconded by Board Member Cisneros, duly carried by the following vote, the Board established a regular meeting to be held on the first Wednesday of the month at 8:15 a.m.:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

II. OVERSIGHT BOARD

3. Recommendation: Review and approve the following Items under the Recognized Obligation Payment Schedules (ROPS) for the period of February 1, 2012 - June 30, 2012, which were continued from the meeting of April 24, 2012:
- Certificate of Participation for MHRP, MERP and SMRP
 - Advances made by the City on behalf of RDA for MHRP, MERP and SMRP
 - Pension Obligation for MHRP, MERP and SMRP
 - Attorney's Fees for MHRP, MERP and SMRP
 - MERP Advances from Other Project Fund (listed as items 5 - 10 on ROPS)
 - MERP Ostrom Chevrolet Agreement (12-1711)

Certificate of Participation for MHRP, MERP and SMRP:

Michael A. Huntley, Director of Planning & Community Development, City of Montebello provided the Board Members with supporting documentation for the Certificates of Participation (COP) and explained that these are considered obligations in accordance with the California Health and Safety Code Section 34171D2 and D1A.

Matt Gorman, Assistant City Attorney further explained that subsection E of the code defines indebtedness and does not limit to certain types of agreements. Mr. Gorman added that he is unable to provide legal counsel to the Oversight Board and serves as legal counsel to the Successor Agency (SA) and City, his firm previously represented the former RDA.

Vice Chair Bruckner questioned the underlying purposes of the COP. Chair Breskin explained that it is not the Oversight Board's responsibility to evaluate whether the agreement was done in accordance with the law at the time of issuance.

Board Member Plotkin disagreed and informed the members that based on training she received, members are to question the legitimacy of the items listed on the ROPS including the validity of the agreement at the time of issuance and refer questionable items to the State Controller for further evaluation.

Mr. Huntley explained that the COP was not a third party purchase. The COP was issued in 1993 and refinanced in 2000. The COP was associated with the removal of blight. The project improved the Civic Center with the expansion of the Police Department.

Vice Chair Bruckner expressed the need for further documentation on this item and the advice of legal counsel to move forward and requested answers to the following questions:

1. Is the Oversight Board able to look back and consider the legality of the agreement at the time of issuance and if so; was the agreement legal?
2. Is the COP an enforceable obligation under the existing law?

Mr. Gorman stated that it is the SA's position that the COP is a justifiable obligation under section 34171 subsection D2 of the Health and Safety Code and further added that there are consequences of not taking action. The law does allow the Oversight Board to amend the ROPS.

Francesca Tucker-Schuyler, Director of Finance, City of Montebello added that the COP is a debt service obligation payment for \$1.3 million that needs to be met by October 2012. There is a sense of urgency because the County Auditor-Controller instructed that a certified ROPS is due tomorrow, May 3, 2012. The ROPS is in the early stages of review and funds will only be released once the Department of Finance and the County Auditor-Controller have reviewed and are satisfied with the ROPS. The Successor Agency could be facing a potential default on this debt service if no action is taken.

Mr. Gorman spoke on behalf of the Successor Agency and suggested that in order to meet the deadline; the Board in accordance with the code may consider approving the ROPS subject to clarification while maintaining the capacity to amend the ROPS at a future meeting.

Board Member Plotkin added that the final approval does not take place until the ROPS have been certified.

Advances made by the City on behalf of RDA for MHRP, MERP and SMRP:

Mr. Huntley explained that advances made by the City on behalf of the RDA listed on the ROPS currently do not have payments due at this time.

Vice Chair Bruckner questioned the enforceability of the obligation as determined by the law's requirement of the agreement having been entered into within 2 years of the creation of the RDA.

Board Member Hidalgo highlighted that the law provides additional criteria for enforceability that this obligation meets.

Pension Obligation for MHRP, MERP and SMRP:

Mr. Huntley provided the memorandum of understanding between the City and RDA and stated that the pension obligation is for full time employees of the RDA.

On motion of Vice Chair Bruckner, seconded by Board Member Plotkin, the Board unanimously approved the Pension Obligation on the ROPS for the periods of February 1 – June 30, 2012 and July 1 – December 31, 2012.

Attorney's Fees for MHRP, MERP and SMRP:

Mr. Huntley explained that the standard City attorney fees were included in the administrative fees on the revised ROPS and recommended leaving litigation as a separate item on the ROPS due to a concern whether there will be adequate funding for ongoing litigation.

Vice Chair Bruckner stated that at one point the Board would like to review a cash flow report.

Board Member Cisneros requested that the attorney fees hours billed for litigation be provided to the Board.

Mr. Huntley explained that due to the nature of the litigation, it may require discussion in closed session.

On motion of Board Member Sutkin, seconded by Board Member Plotkin, the Board unanimously agreed to place the litigation fees as a separate item on the ROPS.

MERP Advances from Other Project Fund:

Mr. Huntley explained that this has the same issue as the Advances Made by the City previously discussed and additional documentation will be provided to the Board members.

Ms. Tucker-Schuyler explained that there is no payment due at this time and will always reflect a zero balance. The advances were from one project area to another for financing. The item was listed on the ROPS in order to tie to the audited financial statements.

Board Member Plotkin requested a copy of the audited financial statements.

Montebello Hills Housing Deferral:

Mr. Huntley provided the supporting documentation for the Montebello Hills Housing Deferral and explained this is an obligation of the Successor Agency to pay the 20% housing set aside for affordable housing within the community.

Ms. Tucker-Schuyler explained that there is no obligation for July 2012 through December 2012; however, the timing of the repayment has not been determined. There will be a payment at some point and it will be brought back to the Board for evaluation.

Contractual Services:

Mr. Huntley informed the Board that the Contractual Services that was previously listed on the ROPS has been removed and was included in the Administrative Fees.

On motion of Board Member Sutkin, seconded by Vice Chair Bruckner, duly carried by the Following vote, the Board approved the ROPS as a draft for the periods of February 1 – June 30, 2012 and July 1 – December 31, 2012 subject to the following:

- Amend the ROPS with litigation fees listed as a separate item on the ROPS.
- Clarification on the Board's ability to evaluate the legality of agreements at the time of issuance and the enforceability of the Certificates of Participation and Advances from Other Project Fund.
- Clarification on the code in regards to housing set aside and ROPS items associated with HUD funds.

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

Attachments: [Recognized Obligation Payment Schedules February 1, 2012 - June 30.](#)

4. Recommendation: Review and approve Recognized Obligation Payment Schedules (ROPS) for the period of July 1, 2012 - December 31, 2012. (Continued from the meeting of 4-24-2012) (12-1712)

The Board discussed and voted on this item under Agenda Item 3.

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

Attachments: [Recognized Obligation Payment Schedules July 1, 2012 - December](#)

5. Recommendation: Request the Successor Agency to provide documentation of all encumbered and unencumbered Low and Moderate Housing Funds. (Continued from the meetings of 4-24-12 and 5-2-12) (12-1715)

Michael A. Huntley, Director of Planning & Community Development, requested this item be continued to the next regular meeting for additional supporting documentation to be provided to the Board.

On motion of Vice Chair Bruckner, seconded by Board Member Cisneros, the Board continued this item to June 6, 2012 by the following vote:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

6. Recommendation: Direct the Successor Agency to report on the sufficiency of cash flow. (Continued from the meeting of 4-24-12) (12-1716)

Vice Chair Bruckner recommended the report on the sufficiency of cash flow be provided over time by six month intervals and differentiate the "housing set aside" and "not housing set aside" items.

On motion of Vice Chair Bruckner, seconded by Board Member Cisneros, duly carried by the following vote, the Board directed the Successor Agency to provide a cash flow report based on ROPS time periods:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

7. Recommendation: Approve the Successor Agency Administrative Budget. (Continued from the meeting of 4-24-12) (12-1717)

Michael A. Huntley, Director of Planning & Community Development, provided the Board with the proposed administrative budget for the ROPS periods of February 1 – June 30, 2012 and July 1 – December 31, 2012.

Ms. Tucker-Schuyler, Director of Finance, City of Montebello advised the Board that the budget for the first period was based on the gross tax increment received from the project areas for the last fiscal year and stated that the tax increment from the former RDA was not sufficient, the City advanced cash to ensure obligations were met, the City did not receive tax increment from the County for the February 2012 to June 2012 period. The Successor Agency is in a negative cash position.

A letter was sent to the County Auditor-Controller addressing this. The letter includes a request for clarification on the protocol and informs the County that the Successor Agency is currently in a negative position.

Member Sutkin, requested a copy of this letter.

On motion of Vice Chair Bruckner, seconded by Board Member Plotkin, duly carried by the following vote, the Board approved the Administrative Budget for the ROPS periods of February 1 – June 30, 2012 and July 1 – December 31, 2012:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

8. Recommendation: Direct Successor Agency to remit unencumbered fund balances to the Los Angeles County Auditor-Controller for distribution to the taxing entities, including the unencumbered balances of Low and Moderate Income Housing Funds. (Continued from the meetings of 4-24-12 and 5-2-12) (12-1718)

Michael A. Huntley, Director of Planning & Community Development, requested this item be continued to the next regular meeting for clarification on the policy.

On motion of Vice Chair Bruckner, seconded by Board Member Sutkin, dully carried by the following vote, the Board continued this item to June 6, 2012:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

9. Consideration of retaining Legal Counsel services for the Oversight Board. (Continued from the meetings of 4-24-12 and 5-2-12) (12-1719)

Michael A. Huntley, Director of Planning & Community Development, provided the Board with a list of firms that responded to the request for proposal. Chair Breskin suggested a subcommittee be setup to interview the law firms that responded to the RFP and be authorized to select and enter into a contract with legal counsel.

Subcommittee members: Chair Breskin, Board Member Plotkin, and Michael A. Huntley

Chair Breskin announced at the start of the meeting that he was served with a law suit minutes before the meeting began. The Oversight Board Staff will provide the Board members with a copy. It was discussed that a closed session at a future meeting would be more appropriate to share the details of the law suit with the other Board Members.

On motion of Vice Chair Bruckner, seconded by Board Member Sutkin, duly carried by the following vote, a subcommittee was created to interview and authorized to select and enter into a contract with legal counsel for the Oversight Board:

Ayes: 6 - Chair Breskin, Vice Chair Bruckner, Member Cisneros, Member Sutkin, Member Plotkin and Member Hidalgo

Vacant: 1 - Chancellor of California Appointee

Attachments: [Staff Report](#)

III. MISCELLANEOUS

10. Matters not on the posted agenda (to be Presented and Placed on the Agenda of a Future Meeting). (12-1890)

Board Member Cisneros requested copies of the project area agreements. Michael Huntley, Director of Planning and Community Development, advised that staff is working to provide the requested information.

11. Public comment. (12-1891)

Ana Arriola, Montebello resident, addressed the Oversight Board.

12. Adjournment. (12-1892)

The meeting was adjourned at 9:48 a.m. The next regular meeting for the Oversight Board will be Wednesday, June 6, 2012 at 8:15 a.m.